



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 14, 1998

Mr. Alberto J. Pena  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR98-2179

Dear Mr. Pena:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118610.

The City of San Antonio (the "city") received a request for documents pertaining to a particular EEOC file. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You submit information under Attachment B which reveals an ongoing lawsuit in which the city is a named defendant. Additionally, after reviewing the documents under Attachment C, we conclude that they are related to the litigation. Therefore, the city may withhold the requested documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the

applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a stylized, overlapping loop structure.

Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/nc

Ref.: ID# 118610

Enclosures: Submitted documents

cc: Mr. Lucio Aguilar  
17150 Benton City Road  
Von Ormy, TX 78073  
(w/o enclosures)